IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

TUESDAY, THE 16TH OCTOBER 2007 / 24TH ASWINA 1929

Crl.MC.No. 5103 of 2003()

ST.1451/2003 of JUDL.MAGISTRATE OF FIRST CLASS, ETTUMANUR

.....

PETITIONER: ACCUSED:

---

1. LIJO JOSEPH, AGED 29 YEARS,
   PUTHAPPARAYIL HOUSE, THURAVOOR, ERNAKULAM.

2. SIJO JOSEPH, AGED 25 YEARS,
   PUTHAPPARAYIL HOUSE, THURAVOOR, ERNAKULAM.

3. PAPPACHAN K.P., AGED 63,
   KAITHARATHIL HOUSE, MANJAPPRA VILLAGE,
   ANGAMALI, ERNAKULAM.

BY ADV. SRI.BECHU KURIAN THOMAS
SRI.PAUL JACOB (P)

RESPONDENTS: COMPLAINANT:

---

1. STATE OF KERALA,
   REPRESENTED BY SUB INSPECTOR OF POLICE,
   ETTUMANOOR, KOTTAYAM THROUGH PUBLIC PROSECUTOR,
   HIGH COURT OF KERALA.

2. SUMESH, S/O. K.K.DAMODARAN,
   S.I. QUARTERS NO.II, A.R.CAMP, KOZHIKODE.

BY ADV. SRI.P.K.MEETHIN KUNJU FOR R2
PUBLIC PROSECUTOR, SRI C.K.SURESH FOR R1

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 16/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.R.UDAYABHANU, J.

~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~

Crl.M.C.No.5103 of 2003-C

~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~

Dated this the 16th day of October, 2007

O R D E R

The petitioners 1 and 2 who are the Partners and the third petitioner the Manager of New Orma Marble Palace have sought for getting quashed the proceedings initiated against them vide Annexure A6 final report as S.T.No.1451/2003 in the court of the Judicial Magistrate of the First Class, Ettumanoor, with respect to the offences under Sections 342, 294(b), 506(i), 323 and read with Section 34 of the Indian Penal Code. The de facto complainant therein is the second respondent herein who was an employee of the unit of the New Orma Marble Palace, Kumaranalloor, Kottayam, and who was the in-charge of the stock-in-trade therein. It is stated that the petitioners had conducted verification of stock on 31/01/2003 and copy of the Stock Verification Report is Annexure A1. On the stock verification it was found that there was huge deficit and the second respondent de facto complainant was served with a memo dated 03/02/2003, copy of which is Annexure A2. Second respondent gave reply dated 04/02/2003 which was not satisfactory and a detailed memo dated 10/02/2003 was issued

vide Annexure A3. Thereupon the second respondent submitted a statement dated 13/04/2003 in his own handwriting vide Annexure A4 admitting the guilt and undertaking to repay the amount. Immediately, the third petitioner lodged the complaint before the Gandhinagar Police Station, Kottayam on 13/04/2003 and F.I.R was registered as Crime No.117/2003, a copy of which is Annexure A5. Subsequently, final report was filed alleging offences under Sections 408 and 420 I.P.C against the second respondent. Subsequently, it is seen that the second respondent who is a son of a Sub Inspector of Police, has got a false case registered against the petitioners on 19/04/2003 as Crime No.122/2003 alleging that the petitioners had beaten up and abused the second respondent. The final report is Annexure A6, which has been taken cognizance as ST.No.1451/2003. Annexure A6(a) is the wound certificate.

2. According to the petitioners an examination of the wound certificate alone would suffice to find that the case is a false one and instituted on a retaliated measure. It is pointed out that in Annexure A6(a) wound certificate, the alleged incident is dated 11/04/2003 and the date of examination is 18/04/2003 and the

doctor had only noted abrasions and it is also noted that abrasions are 24 hours old. The amount allegedly misappropriated is Rs.4,97,990/-. In the circumstances and in view of the facts, the discrepancies seen in Annexure A6(a) wound certificate, I find that the proceedings initiated by the second respondent as S.T.No.1451/2003 in the Court of the Judicial Magistrate of the First Class, Ettumanoor, amounts to abuse of process of the court and is liable to be set aside; and I do so. The proceedings pending as S.T.No.1451/2003 in the Court of the Judicial Magistrate of the First Class, Ettumanoor, is herewith quashed. The Crl.M.C is allowed.

K.R.UDAYABHANU,
Judge

ms